

**EXHIBIT E**

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen, ) CIVIL NO. CV03-00385 SOM-LEK  
Plaintiff, ) (Copyright)  
v. ) AFFIDAVIT OF TERESA NOA  
HAWAIIAN EXPRESS SERVICE, INC., )  
et al. )  
Defendants. )  
\_\_\_\_\_ )

AFFIDAVIT OF TERESA NOA

STATE OF IOWA )  
COUNTY OF LOUISA ) SS.

TERESA NOA, being first duly sworn under oath deposes  
and says as follows:

1. I am a named Defendant herein.

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2. I am currently a salaried employee of C&S Logistics of Hawaii, LLC, a Delaware LLC. (C&S). My job title is Logistics Supervisor and my duties and responsibilities consist of coordinating transportation of product from the mainland to Hawaii and supervising 5 personnel in the department.
3. Prior to this, I was employed by Fleming Companies, Inc. ("Fleming"). I was employed at Fleming from October 1999 to September 2003. My job title was Logistics Supervisor and my duties and responsibilities included overseeing the tracking of all freight shipped to Hawaii on the computer and the personnel within the department.
4. In connection therewith, I have worked intimately with Mark Dillon ("Mr. Dillon") who is in charge of all of the computers and all information regarding the freight coming to Hawaii. He is the company's LAN Administrator.
5. Both of us were employed by Fleming until it was purchased by C&S. We were asked to be employed by C&S in the same capacities as we were with Fleming.
6. I have always been a salaried employee of both companies and have never received any additional compensation for the development or any changes to any computer software which either Fleming or C&S has used to track freight coming to Hawaii.
7. Both when I was with Fleming and now with C&S, my job requires that I go into the spreadsheets throughout the day – each day – to monitor the freight coming into Hawaii and any updated status. It is the responsibility of each employee in the department to continuously input and update status/data of each purchase order/container in these same spreadsheets – throughout the day – every day. I am able to view each of these changes the other employees in the department are using – as we are using the same spreadsheet to track/monitor the freight into Hawaii.
8. As such, I am intimately familiar with the computer software that we are using to track the freight coming to Hawaii as I use it every day, and see what all of the employees in our department are doing.
9. I am aware that Fleming was using a software system that Wayne Berry claimed to have developed. It was my understanding from various sources, including Mr. Berry himself, that after Fleming began freight tracking responsibilities that Mr. Berry gave permission through a license agreement for Fleming to continue to use his software.
10. In fact, after Fleming took over, Mr. Berry came into the office several times and saw that we were using the same system, and actually helped and monitored us using it.
11. Thereafter, I am aware that Mr. Berry claimed that Fleming did not have permission to use his software and the matter went to trial.
12. I participated as a witness in that trial. I am aware that the jury found that Fleming did have permission to use the software. It also found that Fleming had made unauthorized changes to the software.

13. I tried everything possible to comply with the jury's findings. I followed all instructions given by superiors. We were initially told to go back to Mr. Berry's original version of the software so that there could be no claim that we used a changed version.

14. Practically speaking, this made no sense to me because many changes were made while Mr. Berry was with us and we were using the system. The software was continually changed and updated to meet the ever changing demands of the job and operations. Going back to his original version was impractical and caused long delays and made my job much harder because the system was outdated and irrelevant to Fleming's operations. Nonetheless, in order to attempt to comply with the jury's findings, we went back to that original.

15. I subsequently became aware Mr. Berry complained about us going back to his original, stating that it was not the actual original. This was quite frustrating to me because his original system was really no good for current operations at the time anyway, and he was still not satisfied that we were in compliance. I registered many complaints to my superiors regarding the situation because I knew there were better programs and ways to track freight, and it seemed that we simply kept reacting to whatever Mr. Berry said.

16. Thereafter, I received instruction that we were going to do away with the current system completely just to insure that Mr. Berry had no further complaints. Together with Mr. Dillon, all Fleming's data was taken from software being used and put into Excel Spreadsheets and viewed through Crystal Reports (both of which clearly do not belong to Mr. Berry - These are Microsoft Software Programs not Mr. Berry Programs).

17. C&S has been operating using Excel Spreadsheets and Crystal Reports every since June 9, 2003. Neither me, nor any of my employees have used any of Mr. Berry's software since that date.

18. I was then told that in order to attempt to appease Mr. Berry and comply with the jury's findings that Fleming would hire Guidance Software, Inc., a reputable company, who would insure that none of Mr. Berry's software remained on our computers. We complied with this request.

18. After Guidance spent a week insuring that all of Mr. Berry's software was removed, I was told that Mr. Berry was still complaining that the company was still violating his rights somehow. This was extremely frustrating to me in operations.

19. I have not used and none of the company's employees in my department have used software which belongs to Mr. Berry, or which resembles anything that Mr. Berry created.

20. It has been the Company's intent to get as far away as possible from Mr. Berry and anything he created. The Company has gone to great lengths to attempt to comply with the jury's findings and Mr. Berry's constant harassment.

21. Any files that may remain on any of the Company's computers would be wholly and purely inadvertent, and they have not been used to track freight.

22. I have read where Mr. Berry claims that I fled Hawaii to continue to use his software

undetected from Iowa. That is an absurd claim. I am originally from Iowa. My family continues to reside in Iowa. At the time that word of Fleming filing bankruptcy spread, it created an atmosphere of uncertainty as to the employees' futures. Other similar employment options in Hawaii were extremely limited. It was at that time that my family and I decided to relocate to Iowa in order to keep options and job opportunities open.

23. Mr. Berry also alleges that I am somehow secretly operating his software from a different website, earthlogistics.com. I have never used Mr. Berry's software anywhere, and certainly did not use or attempt to use his software through that website. I created earthlogistics.com at the time that it seemed that my employment was uncertain. I purchased a website and began thinking about doing consulting on my own regarding freight tracking since I have had many years of experience, and am familiar with tariffs, regulations, etc. Earth Logistics was never operated for consulting or freight tracking. I did use it for transmitting emails, as for whatever reason I was not able to send or receive emails from my C&S email address.

FURTHER AFFIANT SAYETH NAUGHT.

TERESA NOA

*Teresa A Noa*

Subscribed and sworn to before me

*Teresa Noa*

this 10th day of August 2004.

Notary Public, State of Iowa

My Commission Expires:

*3-17-07*

Print Name:

*Teresa Noa*

